note was assigned to an innocent purchaser and plaintiff was compelled to pay it. Plaintiff alleged that he was induced to sign the note by the fraudulent representation of defendant that he had an option on the land when in truth and fact he had none. It was proved that defendant had no option whatever on the land, but it appeared that he believed he had been given an option. *Held,* that defendant was liable for the money that he obtained from plaintiff by false representations as to the option on the land, whether he knew they were false or not. *Magill et al.* v. *Coffman et al.* (1910), — Tex. — 129 S. W. 1146.

This decision, while in accord with the principle stated in *Loper* v. *Robinson,* 54 Tex. 510, and *Culbertson* v. *Blanchard,* 79 Tex. 486, is opposed to the well established rule that to support an action of deceit based on a false representation a *scienter* must be proved. *Glasier* v. *Rolls,* 42 Ch. Div. 436; *Derry* v. *Peek,* 14 App. Cas. 337; *Hindman* v. *Louisville First Nat. Bank,* 112 Fed. 931; *Belding* v. *King,* 159 Fed. 411. The courts of twenty-six states have followed this rule, the strictness with which it is applied varying from the requirement of actual knowledge of the falsity, *Jolliffe* v. *Collins,* 21 Mo. 338, to merely a representation made without knowledge of its truth or falsity, or under circumstances in which the person making it ought to have known of its falsity. *Wheeler* v. *Baars,* 33 Fla. 696. However, the rule of the Texas court, while contrary to that of most of the states, is not without support. *Totten* v. *Burhans,* 91 Mich. 495; *Davis* v. *Nuzum,* 72 Wis. 439; *Foley* v. *Holtry,* 43 Neb. 133.

HOMESTEAD—PROPERTY CONSTITUTING—EXEMPTIONS.—A Texas statute establishes a business homestead consisting of a lot or lots, provided same be used as place to exercise the calling of the head of the family. A school teacher maintained a normal college, rooming and boarding students on the premises. *Held,* land on which the college buildings were located is exempt, as business homestead. But other lots on which students were roomed and boarded are not so exempt. Likewise other parcels used as baseball ground and vegetable garden to supply students' table, are not exempt. *Harrington et al.* v. *Mayo* (1910), — Tex. Civ. App. —, 130 S. W. 650.

Under same provision it has been held that there may be several lots within the business homestead exemption, but they must constitute a single place at which business is transacted. *Rock Island Plow Co.* v. *Alten et ux,* 102 Tex. 366, 116 S. W. 1144. The courts seem to construe statutes more strictly in regard to business homestead, refusing as here the exemption in case of separation of lots, whereas the exemption is more liberally allowed, under the same constitutional provision, in case of homestead proper. *Anderson* v. *Sessions,* 93 Tex. 279, 51 S. W. 874, 77 Am. St. Rep. 873.

INFANCY—ESTOPPEL TO PLEAD.—Appellant, an infant, signed a note as accommodation maker. The note was accepted by respondent on the faith of appellant's representations by conduct or words that he had arrived at the age of twenty-one years. Whether he expressly so represented was disputed, the preponderance of the evidence being in the negative. From appellant's

appearance and other circumstances respondent had reasonable grounds to believe that the former had reached his majority. Judgment by default was taken against appellant, who now makes a motion to vacate said judgment and at the same time tenders an answer setting up his infancy. *Held,* appellant is not estopped to plead his infancy. *Grauman Marx & Cline Co.* v. *Krienitz* (1910), — Wis. —, 126 N. W. 50.

The general rule is that an infant or other person under disability cannot bind himself by estoppel. *Sims* v. *Everhardt,* 102 U. S. 300. The fact that an infant, at the time of entering into a contract, makes false representations to the person with whom he deals that he has attained the age of majority does not give any validity to the contract or estop the infant from disaffirming the same or setting up the defense of infancy against its enforcement. *Wieland* v. *Kobick,* 110 Ill. 16; *Burley* v. *Russell,* 10 N. H. 184; *Conrad* v. *Lane,* 26 Minn. 389; *Ridgeway* v. *Herbert,* 150 Mo. 606, 51 S. W. 1040, 73 Am. St. Rep. 464; *Carolina etc. Loan Assoc.* v. *Black,* 119 N. C. 323, 25 S. E. 975; *Corey* v. *Burton,* 32 Mich. 30; *Brown* v. *McCune,* 5 Sandf. 224; *Keen* v. *Coleman,* 39 Pa. St. 299; *Wilkinson* v. *Buster,* 124 Ala. 574, 26 South. 940. There is however some authority for the view that such false representations will create an estoppel. *Hayes* v. *Parker,* 41 N. J. Eq. 630, 7 Atl. 511; *Commander* v. *Brazile,* 88 Miss. 668, 41 South. 497, 9 L. R. A. (N. S.) 1117; *Ingram* v. *Ison,* 26 Ky. Law Rep. 48, 80 S. W. 787. In order to create such an estoppel there must be in the first place actual fraud. *Steed* v. *Petty,* 65 Tex. 490. In the second place it is confined to those cases in which the infant possesses the power of discretion. *Barham* v. *Turbeville,* 31 Tenn. 437, 57 Am. Dec. 782; *Williamson* v. *Jones,* 43 W. Va. 562. Also, the transactoin must be beneficial to the minor. *Ostrander* v. *Quin,* 84 Miss. 230, 36 South. 257, 105 Am. St. Rep. 426. The court in the principal case recognizes the rule that an infant may be estopped under these circumstances to plead his infancy but holds that the rule does not apply because the appellant received no benefit from the signing of the note. In cases of this kind one is confronted with two well established principles: first, that a person shall not be permitted to take advantage of his own fraud to injure other people; and second, that an infant is not liable on his contracts. Forbidding him to set up his infancy, indirectly makes him liable on his contract. On the other hand permitting him to plead his infancy, enables him to defraud innocent people, especially, if he has the appearance of one who has reached his majority. The weight of authority and the more logical view is that an infant is not estopped to plead his infancy. As the court said in *Sims* v. *Everhardt,* supra, "A fraudulent representation of capacity cannot be equivalent to actual capacity." Logical as this view is, however, it is apparent that it will not always work out justice, and in some jurisdictions an action in tort will lie against the infant where recovery can be had without giving effect to the contract. *Rice* v. *Boyer,* 108 Ind. 472, 9 N. E. 420, 58 Am. Rep. 53; *New York Loan Co.* v. *Fisher,* 23 N. Y. App. Div. 363, 48 N. Y. Supp. 152. In other states such a liability has been denied. *Slayton* v. *Barry,* 175 Mass. 513, 56 N. E. 574, 49 L. R. A. 560; *Nash* v. *Jewett,* 61 Vt. 501,, 18 Atl. 47, 15 Am. St. Rep. 931, 4 L. R. A. 561.